

**IN THE UNITED STATES COURT
WESTERN DISTRICT OF ARKANSAS**

CURTIS J NEELEY JR, MFA

VS

CASE NO. 5:09-cv-05151-JLH

NameMedia Inc.
Network Solutions Inc.
Google Inc.

**BRIEF SUPPORTING OPPOSITION
TO THE MOTION FOR DISMISSAL DKT 104**

Plaintiff respectfully and concisely opposes the Motion to Dismiss filed by the Defendant and asserts evidence supports denying of the Motion as illustrated that the limitations ruling of Docket #97 does not stretch to include equitable tolling for Network Solutions LLC action in 2003 although statutory tolling was ruled because the Plaintiff was not aware of the transgressions until this action was begun as is demonstrated in evidence more fully as follows and is evidenced in the record and in the included exhibit.

Equitable Tolling Standard

Equitable tolling is a principle of tort law stating that a statute of limitations shall not bar a claim in cases where the plaintiff, despite use of due diligence, could not or did not discover the injury until after the expiration of the limitations period.

See <wikipedia.org/wiki/Equitable_tolling>

Due Diligence

Plaintiff has shown a standard of care much higher than could be reasonably expected by any observer giving him the benefit of all reasonable inferences. This standard allegedly applies to Motions for Summary Judgment like any Motion to dismiss for failure to state a claim is. Rather than again type the Standard or cite case law the Plaintiff will ask that the Court review the repetitive assertions of each represented party. “Due diligence” is a concept regarding limitations. Limitations begin to run against plaintiffs when they knew or should have, using due diligence to discover claims. In this context, the term "due diligence" determines the scope of a Plaintiff's constructive knowledge, upon receiving notice of facts sufficient to constitute "notice" that further investigation might reveal a cause of action.

Diligent Investigation

Plaintiff is severely disabled and yet has sought assistance from parties that are obviously more familiar with the domain name economy though opposed to the Plaintiff's stated belief that the “domain name” economy is a Ponzi scheme. Plaintiff reasonably and diligently inquired regarding his prior two domain names. The Plaintiff's discovery of his dealings with “Network Solutions” can be seen at a forum where he can be seen showing diligence greatly exceeding “due diligence”. *See* Ex A or <namepros.com/599321-namemedia-sued-for-cybersquatting-my-domains-12.html>. Exhibit A is a screen capture of the above URL and is relevant as follows since the URL requires registration although it is free

1. Plaintiff did not know the original registrar as can be plainly seen in his question posted on 10-18-2009, at 08:51 PM. For the relevant portion it can be seen that Plaintiff asks there as follows. *“Can anyone help me determine when I first registered eartheye.com and who was the registrar I once used? I know it was after 1991 but several years prior to 1997.”* Italics and underlining added.
2. The Plaintiff can then be seen first made aware to the standards of “inquiry notice” in a subsequent reply to the forum where he thanked the respondent who answered on 10-18-2009 at 09:55 PM with a response on 10-19-2009, at 01:00 AM. Plaintiff wrote as follows. *“WoW! Thank you so much sir! That information answers the question extremely well! I thought I had been told it was at an "expiry" auction. I can't find anything now to support that belief.”* Italics and underlining added.
3. Esq Erik Zilinek of NAMEMEDIA INC told the Plaintiff it was at an expiry auction as seen now in the record. This is now an issue for discovery and trial. Plaintiff attempted to resolve this out of Court as seen in the record repeatedly, but then filed Dkt #48 01/21/2010 where Plaintiff asked to add “Network Solutions”.

Conclusion

Whereas it can now be seen on the record, the second amended complaint was reasonably timely and demonstrated extreme diligence easily exceeding “due diligence”. Plaintiff prays the Court now use due diligence and all reasonable inferences in favor of the Plaintiff or nonmoving party to deny the motion to dismiss of “Network Solutions” Dkt #104. The prior agreement by the Plaintiff in Docket #112 ¶ III(a) was in error or was an agreement only on the statutory limitations.. This appears an error that is now flagrantly obvious. Plaintiff prays that he be given seven days correct and enter an amended Third Amended Replacement Complaint rather than relying on the actions taken by ”Network Solutions” that were taken since this action began. Plaintiff has not herein violated anything that the admittedly competent opposing Counsel should not have been aware of. All the Defendants and the Court are likely almost as nauseated as the Plaintiff and plaintiff believes that no “competent” Counsel is doing much better. Equitable tolling is best presented to a jury.

Respectfully submitted,

Curtis J Neeley Jr, MFA